

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36477

|                       |   |                                  |
|-----------------------|---|----------------------------------|
| THOMAS COFFELT,       | ) | 2009 Unpublished Opinion No. 692 |
|                       | ) |                                  |
| Petitioner-Appellant, | ) | Filed: November 24, 2009         |
|                       | ) |                                  |
| v.                    | ) | Stephen W. Kenyon, Clerk         |
|                       | ) |                                  |
| WARDEN SMITH,         | ) | THIS IS AN UNPUBLISHED           |
|                       | ) | OPINION AND SHALL NOT            |
| Respondent.           | ) | BE CITED AS AUTHORITY            |
|                       | ) |                                  |

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Daniel C. Hurlbutt, District Judge.

Order dismissing petition for writ of habeas corpus, affirmed.

Thomas Coffelt, Boise, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent, did not participate on appeal.

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MELANSON, Judge

Thomas Coffelt appeals from the district court's order dismissing his petition for writ of habeas corpus. For the reasons set forth below, we affirm.

Coffelt was convicted and sentenced in Canyon County.<sup>1</sup> Coffelt filed a petition for writ of habeas corpus, as well as a request for the appointment of counsel, in Ada County where he was incarcerated. Coffelt's petition alleged that he was innocent, his plea was not knowing and voluntary, his sentence was excessive, he was sentenced under the wrong law, the state was refusing him access to rehabilitative services so that he could be released on parole, evolving standards of decency show that his due process rights were violated, and his sentence constituted cruel and unusual punishment. Regarding his conditions of confinement claims, Coffelt provided no documentation that he had exhausted administrative remedies, but alleged that he

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<sup>1</sup> The limited record on appeal does not reveal the nature of Coffelt's crime.

was in imminent danger of serious physical injury because he raised Eighth Amendment claims, exhaustion was futile, respondents were on notice of his claims, and traditional exceptions apply.

The district court dismissed Coffelt's petition relating to any claims regarding conditions of his confinement because he had failed to show that he exhausted available administrative remedies and failed to adequately show that he was in imminent danger of serious physical injury. The district court treated his claims concerning his judgment of conviction and sentence as an application for post-conviction relief.<sup>2</sup> The district court held that these claims were required to be filed in the court in which Coffelt was convicted and gave Coffelt notice of its intent to dismiss these claims and twenty days to respond. Coffelt did not provide any adequate explanation for why his claims should be considered in Ada County. Accordingly, the district court dismissed these claims after the expiration of twenty days. Coffelt appeals.

Coffelt argues that the district court abused its discretion by not appointing counsel to represent him. There is no statutory basis for appointing counsel in a habeas corpus proceeding. *Dopp v. Idaho Comm'n of Pardons and Parole*, 144 Idaho 402, 405, 162 P.3d 781, 784 (Ct. App. 2007). A district court does not have discretion to appoint counsel in a habeas corpus action pursuant to provisions of the Uniform Post-conviction Procedures Act. *Id.* See also *Quinlan v. Idaho Comm'n for Pardons and Parole*, 138 Idaho 726, 729-30, 69 P.3d 146, 149-50 (2003). Because habeas corpus actions are civil in nature, the Sixth Amendment right to counsel does not attach. *Dopp*, 144 Idaho at 405, 162 P.3d at 784. In special circumstances, the Due Process Clause may require appointment of counsel. See *Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986). However, the Ninth Circuit held that due process does not require appointment of counsel when an evidentiary hearing is not held. *Id.* at 729. Furthermore, the issues in this case were not unusually complex or too challenging for a pro se presentation. See *Dopp*, 144 Idaho at 405, 162 P.3d at 784. For these reasons, we conclude that the district court did not abuse its discretion by failing to appoint counsel to represent Coffelt in his petition for writ of habeas corpus.

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<sup>2</sup> Idaho Code Section 19-4203(4) provides that "habeas corpus shall not be used as a substitute for, or in addition to, a direct appeal of a criminal conviction or proceedings under Idaho criminal rule 35 or the uniform post-conviction procedures act." Therefore, because the substance of Coffelt's claims was in the nature of claims for post-conviction relief, the district court treated them as such.

Additionally, Coffelt was not entitled to the appointment of counsel on his claims concerning his judgment of conviction and sentence which the district court treated as claims for post-conviction relief. The decision to grant or deny a post-conviction applicant's request for court-appointed counsel lies within the discretion of the district court. *Charboneau v. State*, 140 Idaho 789, 792, 102 P.3d 1108, 1111 (2004). The district court abuses its discretion where it fails to determine whether an applicant for post-conviction relief is entitled to court-appointed counsel before denying the application on the merits. *See Charboneau*, 140 Idaho at 793, 102 P.3d at 1112. In this case, the district court does not appear to have ever addressed Coffelt's request for the appointment of counsel. However, some post-conviction claims are so patently frivolous that they could not be developed into viable claims even with the assistance of counsel. *Newman v. State*, 140 Idaho 491, 493, 95 P.3d 642, 644 (Ct. App. 2004). Idaho Code Section 19-4902(a) requires that an application for post-conviction relief be filed in "the district court in which the conviction took place." Coffelt's convictions occurred in Canyon County. Therefore, his claims were filed in the wrong court. Thus, assistance of counsel would not have developed his claims any further and the district court's error, if any in failing to address the request, was harmless. Furthermore, because Coffelt's claims concerning his judgment of conviction and sentence were not properly filed before the district court in which his convictions took place, the district court did not err by dismissing them.

Next, we consider Coffelt's claims concerning his conditions of confinement. Coffelt's petition for writ of habeas corpus and brief on appeal are difficult to decipher. However, the district court interpreted his argument to include claims of insufficient medical care and lack of rehabilitative treatment. Coffelt also alleged that there was no law library available to him. Idaho Code Section 19-4206 provides:

(1) Unless a petitioner who is a prisoner establishes to the satisfaction of the court that he is in imminent danger of serious physical injury, no petition for writ of habeas corpus or any other civil action shall be brought . . . with respect to conditions of confinement until all available administrative remedies have been exhausted. If the institution, or state, local or private correctional facility does not have a system for administrative remedy, this requirement shall be waived.

(2) At the time of filing, the petitioner shall submit, together with the petition for writ of habeas corpus a true, correct and complete copy of any documentation which demonstrates that he has exhausted administrative remedies described in subsection (1) of this section.

(3) If at the time of filing the petition for writ of habeas corpus the petitioner fails to comply with this section, the court shall dismiss the petition with or without prejudice.

Coffelt provided no documentation that he had exhausted administrative remedies. Instead, he tried to excuse his failure to exhaust administrative remedies by alleging that he was in imminent danger. In support of his contention that he was in imminent danger, he provided only irrelevant, conclusory statements. Additionally, he provided no argument or documentation that he was subject to waiver of the requirement to exhaust administrative remedies. Therefore, the district court did not err by dismissing his claims.

The district court did not abuse its discretion by failing to appoint counsel to represent Coffelt either in his claims concerning the condition of his confinement or his claims concerning his judgment of conviction and sentence. The district court did not err by dismissing Coffelt's petition for writ of habeas corpus, including his claims concerning his judgment of conviction and sentence which were treated as claims for post-conviction relief. Accordingly, the district court's order dismissing Coffelt's petition for writ of habeas corpus is affirmed. No costs or attorney fees are awarded on appeal.

Chief Judge LANSING and Judge GRATTON, **CONCUR.**